

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 GERRY DEAN JOHNSON,

6 Plaintiff,

2:14-cv-00902-JAD-VCF

7 vs.

ORDER

8 CAROLYN W. COLVIN, Acting Commissioner
9 of Social Security,

10 Defendant.
11

12 Before the court is Plaintiff Gerry Dean Johnson's Motion/Application to Proceed *In Forma*
13 *Pauperis* (#1¹).

14 ***IN FORMA PAUPERIS APPLICATION***

15 Plaintiff Gerry Dean Johnson asserts in his application to proceed *in forma pauperis* that he is
16 unemployed and has no take home wages, but that he receives a social security payment of \$870.00 per
17 month. (#1). Plaintiff also asserts that he has \$20.00 in a checking or savings account, and that his
18 regular monthly expenses are \$945.60. (*Id.*) Accordingly, Plaintiff's request to proceed *in forma*
19 *pauperis* is granted pursuant to § 1915(a).

20 **LEGAL STANDARD**

21 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
22 complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if
23 the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or
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25 ¹ Parenthetical citations refer to the court's docket.

1 seeks monetary relief from a defendant who is immune from such relief. *See* § 1915(e)(2). “To survive a
2 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to
3 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and
4 citation omitted).

5 In considering whether the plaintiff has stated a claim upon which relief can be granted, all
6 material allegations in the complaint are accepted as true and are to be construed in the light most
7 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court
8 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with
9 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
10 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
11 1995) (citation omitted).

12 DISCUSSION

13 A claim cannot proceed without a formal complaint. Fed. R. Civ. P. 3. Here, Plaintiff failed to
14 file a complaint. In the interest of a speedy proceeding, Plaintiff is ordered to file a complaint with the
15 Clerk of Court within fourteen (14) days. *See* Fed. R. Civ. P. 1 (requiring the court to secure the speedy
16 determination of every action). Failure to file a valid complaint within the specified time will result in a
17 recommendation by the court to dismiss Plaintiff’s action.

18 Plaintiff is advised that his complaint must contain (1) “a short and plain statement of the
19 grounds for the court’s jurisdiction”, (2) “a short and plain statement of the claim showing that the
20 pleader is entitled to relief”; and (3) “a demand for the relief sought.” Fed. R. Civ. P. 8. Additionally,
21 the Social Security Act only provides for federal court review of final decisions of the Commissioner.
22 *See* 42 U.S.C. § 405(g). Therefore, Plaintiff’s complaint must be timely, must allege that he is disabled,
23 and must arise from a final decision by the Commissioner of Social Security Administration. In such
24 circumstances, this court has jurisdiction to hear Plaintiff’s appeal of the Commissioner’s denial of his
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1 application for Disability Insurance Benefits under Title II of the Social Security Act. *See* 42 U.S.C. §§
2 401-433.

3 ACCORDINGLY, and for good cause shown,

4 IT IS ORDERED that Plaintiff Gerry Dean Johnson's Application to Proceed *In Forma Pauperis*
5 (#1) is GRANTED.

6 IT IS FURTHER ORDERED that the Plaintiff Gerry Dean Johnson is permitted to maintain the
7 action to conclusion without the necessity of prepayment of any additional fees, costs, or security. This
8 Order granting *in forma pauperis* status shall not extend to the issuance of subpoenas at government
9 expense.

10 IT IS FURTHER ORDERED that Plaintiff Gerry Dean Johnson file a complaint with the Clerk
11 of Court in accordance with this order by June 30, 2014. Failure to do so will result in a
12 recommendation by the court to dismiss Plaintiff's action.

13 NOTICE

14 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
15 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
16 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
17 may determine that an appeal has been waived due to the failure to file objections within the specified
18 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
19 objections within the specified time and (2) failure to properly address and brief the objectionable issues
20 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
21 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
22 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

24 Pursuant to Local Special Rule 2-2, the Plaintiff must immediately file written notification with
25 the court of any change of address. The notification must include proof of service upon each opposing

1 party of the party's attorney. **Failure to comply with this Rule may result in dismissal of the action.**

2 *See* LSR 2-2 (emphasis added).

3 DATED this 16th day of June, 2014.

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5 CAM FERENBACH
6 UNITED STATES MAGISTRATE JUDGE
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